IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 3771 of 1993

Between:

Venkateswara Khadasari Sugar's rep. by Aluri Nageswara Rao, Partner
Mandadam (V), Mangalagiri (M), Guntur Dist.

..... PETITIONER

AND

1 The Commissioner of Income Tax Guntur, Guntur Dist.
2 The Tax Recovery Officer, Vijayawada, Krishna Dist.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pleased to especially one in the nature of Mandamus, requiring the 1st respondent to rehear the petition U/s 264 of I.T.Act, 1961, Challenging the Order imposing penalty U/s 271 (1)(c), with a direction to pass orders a fresh on merits, by issue of a Writ of Mandamus or any other appropriate writ order or direction.

Counsel for the Petitioner:MR.S.RAVI, Advocate.

Counsel for the Respondent No.: MR.J.V.PRASAD

The Court made the following :

ORDER : (per Sri Bilal Nazki, J)

Heard learned Counsel for the parties and perused the record.

This Writ Petition is filed against an order passed by the Commissioner of Income Tax, Guntur in an application under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The petitioner-assessee filed a revision against an order levying penalty on him, before the Commissioner. The Commissioner found that no explanation was offered for concealment of income of Rs.20,000/-, which was shown as expenditure under 'transport and labour'. It was also found that credit to an extent of Rs.6,81,847/- was also suppressed, which was in the names of partners of the firm in their personal accounts in Banks. Neither during the assessment nor during the pendency of penalty proceedings, any explanation was offered by the petitioner, to the concerned authorities. Therefore, in our view, the Commissioner had no other alternative but to dismiss the revision.

We have gone through the revision petition itself. No

explanation is found in the revision petition as well, as to why this income escaped mention before the authorities. The learned Counsel for the petitioner relied on judgments reported in (1) *Commissioner of Income Tax, Madras Vs. Khoday Eswarsa & Sons*, (2) *Commissioner of Income Tax Vs. Jalaram Oil Mills* and (3) *Commissioner of Income Tax, West Bengal & another Vs. Anwar Ali*. These judgments, in our view, do not attract the facts of the present case, as no explanation whatsoever, was offered by the petitioner. The question of explanation being accepted or not accepted, will only arise if an explanation had been offered.

For these reasons, we do not find merit in this Writ Petition, which is accordingly dismissed. No costs.

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(BILAL NAZKI, J)

18th August, 2004.

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(S.ANANDA REDDY, J)

ajr

To

1 The Commissioner of Income Tax Guntur, Guntur Dist.
2 The Tax Recovery Officer, Vijayawada, Krishna Dist.

3 Two C.D. copies.